

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA)	
)	
vs.)	SENTENCING MEMORANDUM
)	
)	Docket No.: 0315 1:10CR00013-SPB
JAMES FREDERICK FRANKS,)	
Defendant)	

AND NOW, comes the above-named defendant, James Frederick Franks, by his attorneys, CONNER RILEY FRIEDMAN & WEICHLER, and respectfully files the following Sentencing Memorandum:

I. Procedural History

On June 25, 2019, the defendant entered a plea to obtaining a controlled substance through fraud in violation of 21 U.S.C. §§ 843(a)(3) and (d)(1). The U.S. Probation Office prepared a Presentence Investigation Report which was finalized on September 4, 2019. The defendant is scheduled for sentencing before this Honorable Court on October 15, 2019.

II. Sentencing Consideration

Mr. Franks is 34 years of age. He was born and raised in Altoona, Pennsylvania. In 2009, he graduated from Duquesne University with a doctorate degree in pharmacy.

The defendant was married to his wife, Lindsay, on September 18, 2010. They have three children: Ezekiel (age 7), Abel (age 5), and Ada (age six months). Lindsay is also a pharmacist.

In May, 2016, the defendant was employed as the chief pharmacist at the Soldiers and Sailors Home in Erie. He began diverting medications for his own use. In July, 2017, he contacted S.A.R.P.H. and began his long and difficult road to sobriety.

The defendant has a lengthy history of substance abuse. He participated in outpatient substance abuse treatment at Gateway from 2007 to 2010. He was also diagnosed with anxiety and major depression.

The defendant's life has changed dramatically since the current investigation began. As indicated, on July 14, 2017, he contacted S.A.R.P.H. who referred him to Glenbeigh Treatment Center in Rock Creek, Ohio for inpatient substance abuse disorder treatment. He was admitted to Glenbeigh on July 16, 2017. A copy of a letter from S.A.R.P.H. dated March 14, 2018 is attached hereto. As the letter indicates, defendant self-reported to the Pennsylvania Bureau of Professional and Occupational Affairs and Professional Health Monitoring Program (PHMP). He was enrolled into the program and entered into a Voluntary Recovery Program Consent Agreement on November 28, 2017, which requires that he be monitored until, at least, November 28, 2020. He notified his employer at that time and was placed on a medical leave of absence. He remained in treatment and was discharged to intensive outpatient on August 14, 2017. His monitoring agreement provides for random urine samples, counseling and participation with Narcotics Anonymous, along with other conditions. A copy of his agreement is attached as Exhibit A. The defendant has remained drug-free since his admission into the program and has been a model participant. A copy of a letter from S.A.R.P.H. dated September 18, 2019 is attached as Exhibit B.

In 2018, Mr. Franks enrolled in Edinboro University to earn his masters degree in rehabilitation, clinical and mental health counselling. He, unfortunately, was asked to withdraw from the program when he entered his guilty plea. His hope and expectation is that he will be able to return to Edinboro University once the charges have been finally resolved. He recently obtained a position working at a Java Manga's Outpost in Waterford.

Mr. Franks enjoys an excellent reputation in the community. Character reference letters are attached hereto and marked as Exhibit C.

Mr. Franks' life changed dramatically on July 14, 2017. He was using medication which he obtained from his employment in increasingly large quantities. His addiction was, literally, close to taking his life. His self-reporting and the subsequent investigation likely saved his life. His recovery efforts, by all accounts, have been exemplary.

It is estimated that 10-15% of all healthcare professionals will misuse drugs or alcohol at some time during their careers. **Impaired Healthcare Professional, Critical Care Medicine, February, 2007.** Most diversion cases, such as this, are handled in state court. They are usually resolved through pretrial diversion programs.

The defendant is an ideal candidate for probation. He has no prior criminal record. He diverted medication from the Soldiers and Sailors Home for his own use. He became increasingly addicted to the medication. He did not give, sell, or in any way transfer medication to others. All of the diverted medications were used to feed his addiction. He reached rock bottom and sought help through S.A.R.P.H. He has done remarkably well.

The defendant's sentencing guidelines permit a probationary sentence. He is not a risk to the community. In fact, he is a huge asset. He is truly a remarkable individual. He is a good husband, a great father, and a productive member of the community. He surrendered his pharmacy license, recognizing that he cannot work with controlled substances. His hope and expectation is that he will receive his masters degree and will become a clinical and mental health counselor.

Based upon the above, the defendant would respectfully request that the Court sentence him to a probationary sentence together with community service.

Respectfully Submitted,

CONNER RILEY FRIEDMAN & WEICHLER

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